

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN DATE **ORIGINAL**

APR 07 2004

DIGITAL ENVOY, INC.

Plaintiff

vs.

GOOGLE, INC.

Defendant

CIVIL ACTION

FILE NO: 1:04-CV-0864-CAP

JURY TRIAL REQUESTED

LUTHER L. ... Clerk
By: *[Signature]* Deputy Clerk

NOTICE OF FILING SUBSTITUTED PAGE

Upon review of the Brief in Support of Plaintiff's Emergency Motion for Expedited Discovery, filed with the Court April 6, 2004, counsel for Plaintiff Digital Envoy, Inc. discovered a typographical error on page 5. A corrected page 5 is included with this notice, and the clerk is hereby requested to substitute this page 5 for the page 5 originally filed with the Court.

Respectfully submitted this 7th day of April, 2004.

[Signature]

Timothy H. Kratz
Georgia Bar No. 429297
Luke Anderson
Georgia Bar No. 018330
John A. Lockett III
Georgia Bar No. 455549

4

MILGUIRE WOODS LLP
1170 Peachtree Street
Suite 2100
Atlanta, Georgia 30309
Telephone: (404) 443-5730
Facsimile: (404) 443-5784

Attorneys for Plaintiff
Digital Envoy, Inc.

CERTIFICATE OF COUNSEL

This is to certify that on this day, I served a copy of the within and foregoing **NOTICE OF FILING SUBSTITUTED PAGE** upon counsel via hand delivery, addressed as follows:

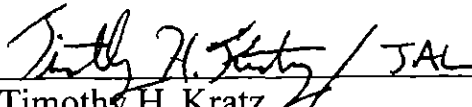
Google, Inc.
c/o Corporation Service Company,
Registered Agent
40 Technology Parkway South, #300
Norcross, Georgia 30092

and via facsimile number 650-618-1499 to:

Michael Kwun, Esq.
c/o Google, Inc.
1600 Amphitheatre Parkway
Mountainview, CA 94043

This is to further certify, pursuant to Local Rule 7.1(D), that the font and point size, Times New Roman 14, used in this brief comply with Local Rule 5.1(D).

This 7th day of April, 2004.



Timothy H. Kratz

McGuireWoods LLP
1170 Peachtree Street, NE
Suite 2100, The Proscenium
Atlanta, Georgia 30309-1234
Telephone: (404) 443-5730
Facsimile: (404) 443-5784

Full roll-out of Gmail is expected to take place within weeks, although the precise date is unknown to the public. Accordingly, time is of the essence for Digital Envoy to (1) obtain the specific information needed to determine its appropriate legal response and (2) act to protect its interest before Gmail's general roll-out.

To aid in its investigation, undersigned counsel contacted the general counsel for Google in an effort to obtain, through cooperation, the information sought here in this motion. See Letter dated April 5, 2004, attached hereto as Exhibit D. Although some contact between counsel ensued, as of the filing of this motion Google had not committed to providing any information to Digital Envoy voluntarily.

As a result, this emergency motion is justified.

Argument and Citation of Authorities

Federal Rule of Civil Procedure 26(d) expressly allows a party to commence discovery on an expedited basis upon court order. However, "unlike other discovery provisions of the Federal Rules, Rule 26(d) does not provide a standard under which a court should decide expedited discovery motions." *Entertainment Technology Corp. v. Walt Disney Imagineering, et al.*, 2003 WL 22519440, *2 (E.D. Pa. 2003). Neither the United States Court of Appeals for the Eleventh